

SUPREME COURT OF NEBRASKA

Burke v. Board of Trustees of the Nebraska State Colleges

302 Neb. 494 (2019) · No. No. S-17-1167 · Decided March 15, 2019

SUMMARY

The Nebraska Supreme Court held that an action against the Board of Trustees of the Nebraska State Colleges is an action against the State and is barred by sovereign immunity absent an applicable legislative waiver. The court concluded that neither Nebraska’s Uniform Declaratory Judgments Act nor the Board’s statutory authority to “sue and be sued” waived sovereign immunity, and that the plaintiff failed to satisfy the pleading requirements for a potential contract-based waiver. The court vacated the district court’s judgment and dismissed the appeal for lack of subject matter jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	March 15, 2019
DOCKET	No. S-17-1167
DISPOSITION	vacated
PROCEDURAL POSTURE	Burke appealed from a district court judgment granting the Board summary judgment and dismissing her declaratory judgment action. The Board cross-appealed the denial of its motion to dismiss. The Nebraska Supreme Court granted the Board's petition to bypass and addressed sovereign immunity and subject matter jurisdiction.
STANDARD OF REVIEW	Questions of subject matter jurisdiction and other questions of law are reviewed independently of the lower court's conclusion when the jurisdictional issue does not involve a factual dispute.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Melissa Burke v. Board of Trustees of the Nebraska State Colleges

TOPICS

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QUESTIONS PRESENTED

1. Whether an action against the Board of Trustees of the Nebraska State Colleges is an action against the State of Nebraska for sovereign-immunity purposes.
2. Whether Nebraska's Uniform Declaratory Judgments Act waives the State's sovereign immunity.
3. Whether Neb. Rev. Stat. § 85-302's provision that the Board may sue and be sued is an express legislative waiver of sovereign immunity.
4. Whether Neb. Rev. Stat. § 25-21,206 waives sovereign immunity where the complaint fails to satisfy the pleading requirements of § 25-21,202.
5. Whether the appellate court could review the merits after determining that the district court lacked subject matter jurisdiction.

HOLDINGS

1. An action against the Board of Trustees of the Nebraska State Colleges is an action against the State of Nebraska because the Board is an instrumentality of and accountable to the State.
2. Sovereign immunity barred Burke's action because no applicable statute waived the State's immunity from suit.
3. Neb. Rev. Stat. § 85-302's provision that the Board may 'sue and be sued' is not an express legislative waiver of sovereign immunity.
4. Burke could not rely on Neb. Rev. Stat. § 25-21,206 as a waiver because her complaint failed to satisfy the pleading requirements of § 25-21,202.
5. When the lower court lacks jurisdiction over the case, the appellate court also lacks jurisdiction to review the merits.

KEY QUOTATIONS

“The sovereign immunity of a state neither derives from nor is limited by the terms of the 11th Amendment to the U.S. Constitution. Rather, as we have recognized, a state’s immunity from suit is a fundamental aspect of sovereignty.” (502)

“A waiver of sovereign immunity is found only where stated by the most express language of a statute or by such overwhelming implication from the text as will allow no other reasonable construction.” (502-503)

“We thus vacate the district court’s judgment and dismiss this appeal for lack of subject matter jurisdiction.” (508)

FACTUAL BACKGROUND

Melissa Burke worked at Chadron State College under yearly employment contracts governed by collective bargaining agreements between the Nebraska State College System Professional Association and the Board. In 2015, her position changed, and the parties disputed whether the change was a reclassification or a transfer because that distinction affected the period of notice required before nonrenewal. Burke was notified on April 8, 2016, that her contract would not be renewed, and she sued the Board seeking declaratory and monetary relief without first using the agreement's grievance procedure.

PROCEDURAL HISTORY

Burke sued the Board in the Dawes County District Court, alleging that the Board breached a collective bargaining agreement by failing to give timely notice that her employment contract would not be renewed. The district court initially overruled the Board's motion to dismiss, but later granted the Board summary judgment based on Burke's failure to exhaust the contractual grievance procedure. On appeal and cross-appeal, the Nebraska Supreme Court ordered supplemental briefing on sovereign immunity, concluded that the action was barred by sovereign immunity, vacated the district court's judgment, and dismissed the appeal for lack of subject matter jurisdiction.

DISPOSITION

vacated

CASES CITED

- *Armstrong v. Clarkson College*, 297 Neb. 595, 901 N.W.2d 1 (2017)
- *Cappel v. State*, 298 Neb. 445, 905 N.W.2d 38 (2017)
- *LeRette v. Howard*, 300 Neb. 128, 912 N.W.2d 706 (2018)
- *Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013)
- *S.L. v. Steven L.*, 274 Neb. 646, 742 N.W.2d 734 (2007)
- *Chase v. Board of Trustees of Nebraska State Colleges*, 194 Neb. 688, 235 N.W.2d 223 (1975)
- *Brady v. Board of Trustees of Nebraska State Colleges*, 196 Neb. 226, 242 N.W.2d 616 (1976)
- *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991)
- *Thomas v. Board of Trustees*, 296 Neb. 726, 895 N.W.2d 692 (2017)
- *State ex rel. Rhiley v. Nebraska State Patrol*, 301 Neb. 241, 917 N.W.2d 903 (2018)
- *Henderson v. Department of Corr. Servs.*, 256 Neb. 314, 589 N.W.2d 520 (1999)
- *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017)
- *Alden v. Maine*, 527 U.S. 706, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999)
- *Jill B. & Travis B. v. State*, 297 Neb. 57, 899 N.W.2d 241 (2017)
- *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010)
- *Regents of Univ. of Cal. v. Doe*, 519 U.S. 425, 117 S. Ct. 900, 137 L. Ed. 2d 55 (1997)
- *Shear v. State*, 117 Neb. 865, 223 N.W. 130 (1929)
- *Amend v. Nebraska Pub. Serv. Comm.*, 298 Neb. 617, 905 N.W.2d 551 (2018)

- *Zawaideh v. Nebraska Dept. of Health & Human Servs.*, 285 Neb. 48, 825 N.W.2d 204 (2013)
- *County of Lancaster v. State*, 247 Neb. 723, 529 N.W.2d 791 (1995)
- *Riley v. State*, 244 Neb. 250, 506 N.W.2d 45 (1993)
- *Concerned Citizens v. Department of Environ. Contr.*, 244 Neb. 152, 505 N.W.2d 654 (1993)
- *Northwall v. State*, 263 Neb. 1, 637 N.W.2d 890 (2002)
- *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007)

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